**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR**

**MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929**

**RSA.No. 920 of 2007()**
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**AS.80/2004 of SUB COURT, KASARAGOD**
**OS.235/2002 of PRL.MUNSIFF COURT , KASARAGOD**
**.....**

**APPELLANTS/APPELLANTS/DEFENDANTS:**
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1. **RAGHAVAN NAIR, AGED 53 YEARS,**
   **S/O. KANNAN NAIR, HINDU, LANDHOLDER, RESIDING AT**
   **ARIASSAM VALAPPIL, BARE VILLAGE, HOSDURG TALUK,**
   **P.O. BARE.**

2. **RATNAKARAN, AGED 29 YEARS,**
   **S/O. KRISHNAN NAIR, HINDU, LANDHOLDER,RESIDING AT**
   **ARIASSAM VALAPPIL, BARE VILLAGE, HOSDURG TALUK,**
   **P.O. BARE.**

**BY ADV. SRI.T.SETHUMADHAVAN**
**SRI.KODOTH PUSHPARAJAN**
**SRI.K.JAYESH MOHANKUMAR**

**RESPONDENTS: RESPONDENT/PLAINTIFF:**
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1. **PADMAVATHI, AGED 65 YEARS,**
   **D/O. ACHUTHAN, HINDU, LANDHOLDER, RESIDING AT**
   **HARITHAN NEKELY, BARE VILLAGE, HOSDURG TALUK,**
   **P.O. MAILATTY.**

2. **K.SASI, AGED 40 YEARS,**
   **S/O. PADMAVATHI, HINDU, LANDHOLDER, RESIDING AT**
   **HARITHAN NEKELY, BARE VILLAGE, HOSDURG TALUK,**
   **P.O. MAILATTY.**

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 920 OF 2007

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DATED THIS THE 12th DAY OF NOVEMBER, 2007

**JUDGMENT**

Defendants in O.S.235 of 2002 on the file of Munsiff Court, Kasaragod are the appellants. Plaintiffs are respondents. Respondents instituted the suit seeking a decree for permanent prohibitory injunction restraining appellants from trespassing into plaint A schedule property. Plaint A schedule property consist of two items. They are in survey No.128/1A1C and 355/7 of Bare Village of Kasaragod Taluk. Though the extent of item No.1 of plaint schedule property was originally 87 cents, after the Advocate Commissioner submitted the report and plan identifying the property, extent was amended and reduced to 71.5 cents. Respondents contended that item No.1 of plaint A schedule property was obtained by first respondent as per Land Assignment order and she has been in possession and enjoyment of the property since then. Item No.2 of plaint schedule property was purchased by second respondent and they are in possession of the property. Appellants who are in possession of the property which lies to the north and west of plaint A schedule property. It was alleged that appellants are attempting to

trespass into the property and therefore they are to be restrained by a permanent prohibitory injunction.

2. Appellants in the written statement contended that item No.1 of plaint schedule property is not in exclusive possession and enjoyment of respondents and description of the properties are not correct and it is not enclosed by an ancient compound wall as alleged and appellants did not attempt to trespass into the property and therefore respondents are not entitled to the decree sought for.

3. Learned Munsiff, on the evidence of PWs 1 & 2, DW1, Exts.A1 to A3, Exts.B1 to B2 and Exts.C1 to C3, granted a decree for permanent prohibitory injunction finding that plaint A schedule properties are as identified by the Commissioner and they are in the possession of respondents and appellants are not entitled to trespass into the same. Appellants challenged the decree and judgment before Sub Court, Kasargod in A.S.80 of 2004. Learned Sub Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

4. Learned counsel appearing for appellants was heard. Learned counsel vehemently argued that courts below failed to

take note of the fact that attempt of respondents is to encroach upon the adjoining government land for which they have no right. It was contended that plaint A schedule property was so described so as to take in the adjoining government land also and there was no attempt to trespass into the property of respondents and the dispute is only with regard to the adjoining government land over which respondents have no right or possession and respondents who did not approach the court with clean hands and set up a false case should not have been granted the discretionary relief of decree for injunction. Learned counsel also argued that under the guise of decree, respondents would trespass into the remaining government land and they have no right to do so and therefore the decree granted is not sustainable.

5. On hearing the learned counsel, I do not find any substantial question of law involved in the appeal. Though item No.1 of plaint A schedule property as originally stood was 87 cents, after the submission of Ext.C1 to C3, identifying plaint A schedule properties, it was amended. Item No.1 of plaint A schedule property as it now stands is only 71.5 cents. Commissioner has demarcated item No.1 of plaint A schedule

property as blue shaded portion and item No.2 of plaint A schedule property as yellow shaded portion. Appellants are not claiming any right or possession over either the blue shaded portion or the yellow shaded portion. What was contended by appellants was only that respondents have no right over the adjoining western plot or northern plot and respondents are not entitled to a relief in respect of those properties. It was also argued that there was no attempt to trespass into either the blue shaded plot or yellow shaded plot and in such circumstances, no decree should have been granted.

6. Though it was argued that there is no cause of action, from the very nature of the defence, it is clear that there is a reasonable apprehension of trespass in the mind of respondents which is sufficient to constitute a cause of action to initiate a suit for injunction. As stated earlier, appellants are not claiming any right, title or possession to either the blue shaded plot or yellow shaded plot, as demarcated by the Commissioner. They are item No.1 and 2 of plaint A schedule property respectively. The decree granted by the trial court and confirmed by first appellate court is restricted to the blue shaded and yellow shaded portion as marked in the plan. In such circumstances, I do not find any

necessity to interfere with the decree granted. If apprehension of the appellants was that on the strength of the decree, respondents may raise claim in respect of the western plot to the yellow shaded plot or the northern plot to the blue shaded plot it is clarified that the decree is confined to the blue shaded plot and yellow shaded plot. There is no reasonable basis for such apprehension. Appeal is therefore dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

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